UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

DAIRY, LLC,[1] a Delaware Limited Liability Company,

Plaintiff/
Counterdefendant,

v.

MILK MOOVEMENT, INC., a foreign Corporation, and MILK MOOVEMENT LLC, a Delaware Limited Liability Company,

Defendants/
Counterclaimants.

No. 2:21-cv-02233 WBS AC

MEMORANDUM AND ORDER RE: DAIRY'S MOTION TO STRIKE AND MOTION TO DISMISS SECOND AMENDED COUNTERCLAIMS

----oo0oo----

Dairy, LLC ("Dairy") initiated this action against Milk Moovement, Inc. and Milk Moovement, LLC alleging trade secret misappropriation under federal and California law, and intentional interference with contractual relations. (First Am. Compl. (Docket No. 48).) Milk Moovement then alleged five

[1] Dairy has changed its name to Ever.Ag. However, this order will continue to refer to Dairy for convenience.

counterclaims: four claims for declaratory judgment under various trade secret laws and one antitrust claim for sham litigation. (Docket No. 111). The court dismissed the sham litigation counterclaim twice, but permitted the declaratory judgment counterclaims. (Docket Nos. 105, 134.) Upon obtaining new information during discovery, Milk Moovement requested leave to amend its counterclaims and add six new antitrust related counterclaims. (Docket No. 204.) The court granted Milk Moovement's request. (Docket No. 244.)

In its Second Amended Counterclaims, Milk Moovement alleges new facts that Dairy engaged in various types of anticompetitive conduct and asserts ten counterclaims, including the four previously pled declaratory judgment claims: (1) no protectable trade secret under the Defend Trade Secrets Act, 18 U.S.C. § 1836; (2) declaratory judgment of no misappropriation under the Defend Trade Secrets Act, id.; (3) declaratory judgment of no protectable trade secret under the California Uniform Trade Secrets Act, California Civil Code § 3426 et seq.; (4) declaratory judgment of no misappropriation under the California Uniform Trade Secrets Act, id.; (5) conspiracy to monopolize under § 2 of the Sherman Act, 15 U.S.C. § 2; (6) monopolization and attempted monopolization under § 2 of the Sherman Act, id.; (7) unlawful restraint of trade under § 1 of the Sherman Act, 15 U.S.C. § 1; (8) unlawful restraint of trade under California's Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 et seq.; (9) unlawful mergers or acquisitions under § 7 of the Clayton Act, 15 U.S.C § 18; and (10) unfair competition under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq.

(Docket No. 249.)

Before the court are Dairy's motion to strike (Docket No. 270) and motion to dismiss (Docket No. 266) the Second Amended Counterclaims.

I. Factual Allegations[2]

Milk is an important and heavily regulated commodity in the United States. (2d Am. Countercls. ¶ 96.) American consumers collectively spend more than $15 billion on milk each year. (Id. ¶ 80.) Participants in the dairy industry manage a large amount of data including milk prices, quantity, location, transit updates, quality testing, and invoices. (Id. ¶ 96.)

Under federal law, the United States Department of Agriculture ("USDA") issues Federal Milk Marketing Orders ("FMMOs"), which then set milk prices across statutorily divided geographic regions. (Id. ¶ 103.) Pursuant to the FMMOs, milk can be "pooled" and therefore subject to regulated pricing. (Id. ¶ 104.) All Class I milk (liquid beverage milk) must be pooled. (Id.) For every other class of milk, milk producers can decide whether to participate in the pool. (Id.)

FMMOs set the rules and conditions for producers pooling milk. (Id. ¶ 108.) FMMOs consider many factors including how much milk the producer "pooled" the previous month and whether the producer diverted milk to other plants participating in the pool. (Id.) Depending on that month's

[2] While the court already discussed Milk Moovement's factual allegations as alleged in its Counterclaims and First Amended Counterclaims, (Docket Nos. 105, 134), the Second Amended Counterclaims contain new factual allegations in support of Milk Moovement's six new antitrust counterclaims. The court takes the allegations of the Second Amended Counterclaims as true.

uniform price for milk, some producers will have to pay into the pool while others will withdraw from the pool. (Id. ¶ 106.)

Milk processors are required to submit monthly reports detailing their total milk receipts by class and specifying how much milk was pooled. (Id. ¶ 109.) Milk processors must also send monthly reports to milk producers. (Id.) These reports must include a variety of metrics including the total pounds of milk received from that producer by date, the minimum payments required to be made to the producer under the FMMOs, and the net amount of payments to the producer. (Id.) The USDA uses these metrics to establish fixed minimum prices for milk and milk products. (Id. ¶ 110.)

Because producers try to obtain the highest possible price for milk, they make pooling decisions based on whether the market price for a particular class of milk is higher or lower than the uniform price. (Id. ¶ 107.) Milk producers also try to avoid paying into the pool. (Id. ¶ 112.) Because milk producers are often organized into cooperatives,[3] not paying into the pool allows a milk producer to use that money to pay member farms. (Id.) A cooperative only engaged in milk production is motivated to obtain the highest price for milk. (Id. ¶ 113.)

Historically, systems for tracking the dairy supply chain used pen and paper and thus were inefficient and prone to error. (Id. ¶ 96.) The advent of supply chain software in the dairy industry, including data processing services, modernized these systems. (Id.)

[3] Milk cooperatives are entities owned by its farmer-members.

Dairy is the largest and most dominant provider of dairy software. (Id. ¶ 97.) Dairy advertises on its website that "over 80 percent of the 100 largest dairy companies in the country are Dairy customers." (Id. ¶ 81.) Dairy was co-founded by Dairy Farmers of America ("DFA"), which continues to have an ownership interest.[4] (Id. ¶ 94.)

DFA is the largest milk producer cooperative in the country as well as an owner and operator of numerous milk processors. (Id. ¶ 94.) As both a milk producer and processor, DFA's interest in the price of milk differs from the typical milk producer cooperative. (Id. ¶ 114.) Whereas milk cooperatives benefit from the highest possible price for milk, DFA -- as a milk processor -- benefits from lower milk prices. (Id.) When DFA sells milk at a low price, it does not impact its net income in the same way low prices impacts other milk producers because DFA can recoup any losses through its profits as a milk processor. (Id. ¶ 117.)

DFA is Dairy's "most important customer." (Id. ¶ 94.) DFA will not work with any Dairy competitors. (Id. ¶ 125.) As a partial owner of Dairy, DFA has access to the data of other milk producers who utilize Dairy's software services. (Id. ¶ 121.) In prior litigation, a district court in Vermont found evidence that DFA indeed accessed the data of competing milk cooperatives. (Id. ¶¶ 119-20.) Further, as the largest milk producer in the country, DFA has the ability to manipulate FMMOs to suppress milk prices. (Id. ¶ 114.) Because of DFA's access to other milk

[4] Dairy is also partially owned by the private equity group, Banneker Partners. (2d Am. Countercls. ¶ 95.)

producers' data and its ability to manipulate FMMOs, Dairy and DFA have an incentive to block competitors in the dairy software industry. (Id. ¶ 122.) Blocking competitors in the dairy software industry allows Dairy to maintain and grow its dominance in the dairy software industry. In turn, Dairy grants DFA access to the data of many of its competitors in the milk production and milk processing industry.

Milk Moovement is a dairy software start-up and Dairy competitor. (Id. ¶ 97.) Milk Moovement created new methods for tracking and analyzing production data, including a cloud-based software platform which connects all entities in the dairy supply chain. (Id. ¶ 97-98.) Milk Moovement's software is used to keep track of data such as how much and when milk is picked up from producers. (Id. ¶ 99.) Its software allows its customers to access data in-real time via computer or mobile app. (Id. ¶¶ 99-100.)

In 2020, Dairy -- through co-owner Banneker Partners -- attempted to acquire Milk Moovement. (Id. ¶¶ 163-167.) Dairy had previously acquired two other entities: Data Specialists, Inc. in 2018 and Ever.Ag in 2022. (Id. ¶ 154.) In addition, Dairy also purchased a software system developed by a dairy cooperative, United Dairymen of Arizona ("United Dairymen"). (Id. ¶ 155.) However, Dairy never brought the software to market. (Id.)

Dairy has previously had relationships with other entities in the dairy industry, including California Dairies, Inc. ("California Dairies") -- a milk marketing and processing cooperative in California. (First Am. Compl. ¶ 32.) In 2014,

California Dairies began using Dairy's software. (Id. ¶ 33.) Because of issues with Dairy's software, California Dairies then entered into an agreement with Milk Moovement in or around September 2021. (Id. ¶ 37.) California Dairies subsequently gave Dairy notice that it was terminating its agreement effective February 1, 2022. (Id. ¶ 41.) Dairy believes that California Dairies shared Dairy's trade secrets with Milk Moovement when it switched data processing service providers. (Id. ¶¶ 42-46.) That belief ultimately led Dairy to initiate this lawsuit in December 2021 for various trade secrets violations. (See Compl. (Docket No. 1).)

The provisions in Dairy's contract with Milk Moovement were not unique. Rather, Dairy's contracts impose exclusivity provisions on its customer which prevent the customers from leaving Dairy for one of its competitors. (2d Am. Countercls. ¶ 138.) These provisions convert a customer's raw data to into Dairy trade secrets. (Id. ¶¶ 139-143.) As a result, customers cannot disclose their own data as necessary to change service providers. (Id. ¶ 144.) If a customer does decide to terminate its relationship with Dairy, they would be unable to transfer its own analytics and production data. (Id. ¶ 145.) This information is critical to both the customer as well as the new software provider. (Id. ¶¶ 145-47.) Moreover, these provisions have the effect of precluding a customer from complying with federal and state law relating to the historical accounting and auditing of that customer's milk pooling and milk pricing activities. (Id. ¶ 148.)

In addition to Dairy's conduct preventing customers

from working with Milk Moovement, Dairy has also blocked Milk Moovement from marketing opportunities. In 2022, Dairy barred Milk Moovement from attending, sponsoring, or presenting at DairyTech -- the milk industry's leading annual technology conference. (Id. ¶ 191.) The DairyTech is organized by the International Dairy Foods Association. (Id.) When Milk Moovement tried to become a sponsor of the event, a requirement for appearing and presenting at the conference, the conference organizers informed Milk Moovement that, due to the organizers' partnership with Ever.Ag (Dairy's new trade name), any Ever.Ag competitors were precluded as sponsors. (Id. ¶ 193.)

Dairy's efforts against Milk Movement eventually led Milk Movement to file its counterclaims against Dairy. The court will first address Dairy's motion to strike before addressing its motion to dismiss the amended counterclaims.

II. Motion to Strike

A. Legal Standard

Federal Rule of Civil Procedure 12(f) authorizes the court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). See Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010) (a district court's "inherent power to control their docket . . . . includes the power to strike") (holding district court has power to strike an improperly filed confidential document) (citing Carrigan v. Cal. State Legislature, 263 F.2d 560, 564 (9th Cir. 1959) (discussing an appellate court's inherent power to strike briefs and pleadings "as either scandalous, impertinent, scurrilous, and/or without

relevancy")) (additional citations omitted). Because motions to strike are "often used as delaying tactics," they are "generally disfavored" and are rarely granted in the absence of prejudice to the moving party. Rosales v. Citibank, FSB, 133 F. Supp. 2d 1177, 1180 (N.D. Cal. 2001); see also N.Y.C. Emps.' Ret. Sys. v. Berry, 667 F. Supp. 2d 1121, 1128 (N.D. Cal. 2009) ("Where the moving party cannot adequately demonstrate . . . prejudice, courts frequently deny a motion to strike . . . .") (citation and internal quotation marks omitted).

B. Discussion

Milk Moovement filed its proposed Second Amended Counterclaims attached as Exhibit 1 to its motion for leave to amend. (See Mot. Leave, Ex. 1 (Docket No. 204-3).) The proposed Second Amended Counterclaims included only Milk Moovement's factual allegations and its six new antitrust related claims. (See id.) The proposed Second Amended Counterclaims did not include Milk Moovement's answer, affirmative defenses, or prior declaratory judgment counterclaims from its Counterclaims and First Amended Counterclaims (Docket Nos. 79, 111), which survived two motions to dismiss. (See Docket Nos. 105, 134.) After being granted leave to amend by this court, Milk Moovement filed the Second Amended Counterclaims, which incorporated its previously filed answer, affirmative defenses, and declaratory judgment counterclaims with the new factual allegations and six counterclaims from the proposed Second Amended Counterclaims. (Docket No. 249.)

Dairy moves to strike the Second Amended Counterclaims by arguing that the "filing was inappropriate and objectively

unreasonable" because it "was substantively and materially different" than the proposed counterclaims. (Mot. Strike at 1 (Docket No. 270).) Dairy contends that Milk Moovement's filing of its Second Amended Counterclaims was a violation of Federal Rules of Civil Procedure 15 and 16, Local Rules 137(c) and 220, and the court's order granting Milk Moovement leave to amend. (Id.) Dairy asks that the court require Milk Moovement to either proceed with the proposed counterclaims or proceed with the First Amended Counterclaims, thereby abandoning its new antitrust counterclaims. (Mot. Strike at 16.) The court will decline Dairy's request.

As Milk Moovement explains: "Every single word in the [Second Amended Counterclaims] was either (i) already part of the case in the existing answer, defenses or claims, or (ii) the Court had expressly authorized it to be added to the case by granting leave to amend." (Opp'n Mot. Strike at 3 (Docket No. 291).) As discussed below, the court rejects all of Dairy's arguments. The court sees Dairy's motion to strike as simply a second attempt to dismiss Milk Moovement's new antitrust counterclaims in the event its concurrently filed motion to dismiss (Docket No. 266) is unsuccessful.

First, Dairy argues that the court should strike the Second Amended Counterclaims because they were filed in violation of Local Rule 220, which states that "every pleading to which an amendment or supplement is permitted as a matter of right or has been allowed by court order shall be retyped and filed so that it is complete in itself without reference to the prior or

superseded pleading."[5] But the Second Amended Counterclaims, as filed, complies with Rule 220 as it contains Milk Moovement's answer, affirmative defenses, and counterclaims.[6] See L.R. 220

Next, Dairy argues that the Second Amended Counterclaims violate the court's order granting Milk Moovement leave to amend under Rules 15 and 16 of the Federal Rules of Civil Procedure because Milk Moovement was not granted leave to file a "synthesized" pleading.[7] (Mot. Strike at 11-13.) Again, the court disagrees. Unlike the cases upon which Dairy relies,[8]

---

[5] It appears that Dairy is attempting to argue that Exhibit 1 attached to its leave to amend -- the proposed Counterclaims -- is a pleading. However, as Milk Moovement points out, under Fed. R. Civ. P. 7(a), an exhibit is not a pleading. See Fed. R. Civ. P. 7(a) (listing types of pleadings allowed, including a complaint, an answer, and an answer to a counterclaim designated as a counterclaim).

[6] Dairy also points out that the filed Second Amended Counterclaims incorporate by reference earlier pleadings, specifically references to the First Amended Counterclaims. (See Mot. Strike at 13-14.) Milk Moovement explains that these were typographical errors that were supposed to reference the Second Amended Counterclaims. (See Opp'n Mot. Strike at 11 n. 5). While counsel is cautioned to avoid such basic errors, the court declines to find the pleading violated Rule 220 on the basis of a typographical error.

[7] Dairy suggests that a "synthesized pleading" is a pleading which is a "synthesis" of the operative parts of other pleadings. Thus, Dairy contends that Milk Moovement's Second Amended Counterclaims is a "synthesized pleading" as it contains the operative portions of Milk Moovement's Answer and First Amended Counterclaims as well as its proposed Second Amended Counterclaims.

[8] The cases upon which Dairy relies in support of its motion to strike all involve instances where a party filed an amended pleading that greatly differed from the proposed pleading. See e.g., Hazdovac v. Mercedez-Benz USA, LLC, No. 20-cv-00377 RS, 2022 WL 2161506, at *2 (N.D. Cal. June 15, 2022) ("The new [c]omplaint is littered with hundreds of changes compared to the proposed complaint, with paragraph after paragraph of new material in certain sections.").

the Second Amended Counterclaims include no new facts or claims that were not already asserted in the First Amended Counterclaims or proposed Second Amended Counterclaims. Rather, the answer and affirmative defenses included in the Second Amended Counterclaims are identical to those in the First Amended Counterclaims. Dairy also argues that Milk Moovement abandoned the previously pled declaratory judgment counterclaims because they were not included in the proposed Second Amended Counterclaims. To the extent leave must be given to ensure the previously pled declaratory judgment counterclaims are properly included in the Second Amended Counterclaims, it is hereby granted.

Finally, Dairy argues that the court should strike the Second Amended Counterclaims because they were filed in violation of Local Rule 137(c). Local Rule 137(c) provides: "If filing a document requires leave of court, such as an amended complaint after the time to amend as a matter of course has expire, counsel shall attach the document proposed to be filed as an exhibit to moving papers seeking such leave and lodge a proposed order as required by these Rules." L.R. 137(c).

Dairy is correct that Milk Moovement did not comply with the precise requirements of Local Rule 137(c) because it failed to incorporate its new counterclaims into its preexisting answer, affirmative defenses, and declaratory judgment counterclaims. Nevertheless, the court declines Dairy's invitation to strike the six new counterclaims where Dairy has not adequately shown that it will be prejudiced.[9] See Rosales,

[9] Dairy argues it will be prejudiced because it "relied upon the proposed [Second Amended Counterclaims] in deciding whether to oppose and evaluating what arguments were available

133 F. Supp. 2d at 1180.

Moreover, to strike the Second Amended Counterclaims on any procedural ground would be futile. The court would strike these counterclaims without prejudice, allowing Milk Moovement to refile the exact same pleading as their currently filed Second Amended Counterclaims. Dairy would then refile their motion to dismiss. Thus, the case would be in the same position as it is today, except having endured a months long delay. The court therefore declines to strike the six new counterclaims, which it granted leave to amend, on a pure procedural technicality and for which Dairy cannot honestly claim it will suffer any prejudice.

Dairy's motion is to strike is nothing more than a disfavored delay tactic. Such a motion is a waste of the court's time and resources. Accordingly, Dairy's motion to strike the Counterclaims (Docket No. 270) is denied.

III. Motion to Dismiss

A. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal when the plaintiff's complaint fails to state a claim

---

and should be made in opposition." (Mot. Strike at 8.) Dairy's argument is without merit. At the hearing for Milk Moovement's motion for leave to amend, Milk Moovement's counsel made clear its intentions to file one synthesized pleading which would contain its answer, affirmative defenses, and counterclaims. Moreover, counsel for Milk Moovement again informed Dairy's counsel that it was going to file a synthesized pleading by email prior to filing the Second Amended Counterclaims. (Opp'n Mot. Strike at 9.) Nothing in the Second Amended Counterclaims was new or a surprise to Dairy. Finally, Dairy cannot argue that it will be prejudiced by having to defend itself against "new and expansive antitrust claims." See Fru-Con Constr. Corp. v. Sacramento Mun. Util. Dist., No. CIV. S-05-583 LKK GGH, 2006 WL 3733815, at *5 (E.D. Cal. Dec. 15, 2006) (citation omitted) ("The fact that the amended counterclaim may cause more work does not constitute prejudice.").

upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). "A Rule 12(b)(6) motion tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). The inquiry before the court is whether, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, the complaint has alleged "sufficient facts . . . to support a cognizable legal theory," id., and thereby stated "a claim to relief that is plausible on its face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). In deciding such a motion, all material allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn from them. Id.

"In order to survive a motion to dismiss under Rule 12(b)(6), an antitrust complaint 'need only allege sufficient facts from which the court can discern the elements of an injury resulting from an act forbidden by the antitrust laws.'" Cost Mgmt. Servs. Inc. v. Washington Nat. Gas Co., 99 F.3d 937, 950 (9th Cir. 1996) (citation omitted). "A motion to dismiss a counterclaim brought pursuant to Rule 12(b)(6) is evaluated under the same standard as motion to dismiss a plaintiff's complaint." Niantic, Inc. v. Gobal++, 19-cv-03425 JST, 2020 WL 1548465, at *2 (N.D. Cal. Jan. 30, 2020).

B. Relevant Market

As the first step in any antitrust action, a "plaintiff must allege both that a relevant market exists and that the defendant how power within that market." Newcal Indus., Inc. v. Ikon Office Sols., 513 F.3d 1038, 1044 (9th Cir. 2008). See FTC v. Qualcomm Inc., 969 F.3d 974, 992 (9th Cir. 2020) ("A threshold

step in any antitrust case is to accurately define the relevant market . . .") (citations omitted); Netafirm Irrigation, Inc. v. Jain Irrigation, Inc., 562 F. Supp. 3d 1073, 1081 (E.D. Cal. 2021) (Ishii, J.) (citations omitted) ("Setting the relevant market boundaries is a critical first step as it enables the court to assess issues regarding market share, defendant's ability to lessen or destroy competition, and the alleged antitrust injury.").

A 'market' is the group of sellers or produces who have the 'actual or potential ability to deprive each other of significant levels of business.'" Rebel Oil Co. v. Atl. Richfield Co., 51 F.3d 1421, 1434 (9th Cir. 1995) (citations and quotation omitted). "The relevant market must include both a geographic market and a product market." Hicks v. PGA Tour, Inc., 897 F.3d 1109, 1120 (9th Cir. 2019) (citation omitted).

1. Product Market

"[T]he [product] market must encompass the product at issue as well as all economic substitutes for the product." Newcal, 513 F.3d at 1045 (citation omitted). "The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it." Id. (quoting Brown Shoe v. United States, 370 U.S. 294, 325 (1962)). "The analysis looks to both 'whether two products can be used for the same purpose, and if so, whether and to what extent purchasers are willing to substitute one for the other." FTC v. Facebook, Inc., 560 F. Supp. 3d 1, 17 (D.D.C. 2021) (citation omitted).

Here, Milk Moovement defines the relevant product

market as "the market for data services for milk producers and processors."[10] (2d Am. Countercls. ¶ 124.) As Milk Moovement explains, "both Dairy and Milk Moovement package their supply chain data as integrated systems of software" for the dairy industry. (Opp'n Mot. Dismiss at 10.) The dairy industry's regulatory scheme limits the types of products which could offer these services.[11] See Verizon Commc'ns Inc. v. Law Offs. of Curtis V. Trinko, LLP, 540 U.S. 398, 411 (2004) ("Antitrust analysis must always be attuned to the particular structure and circumstances or the industry at issue. Part of that attention to economic context is an awareness of the significance of regulation."). That both Dairy and Milk Moovement offer data processing services for the dairy industry is sufficient to define the product market at this stage. See Thurman Indus., Inc. v. Pay 'N Pak Stores, Inc., 875 F.2d 1369, 1374 (9th Cir.

[10] Milk Moovement also alleges that the market for milk production and the market for milk processing are additional relevant markets because DFA -- the largest milk producer and one of the largest milk processors in the United States -- has an ownership interest in Dairy. (2d Am. Countercls. ¶ 125.)

[11] Dairy attempts to argue that Milk Moovement was required to specifically identify other competitors because "data service providers" could include countless technology companies including Amazon's AWS and SAP. (Mot. Dismiss at 16). The court is unpersuaded. While presumably any company that provides data services could build the capabilities to provide data processing services for the dairy industry, the fact that they do not do so at this time means that they do not compete within the relevant product market. See Facebook, 560 F. Supp. 3d at 17 ("[T]he fact that other services are not primarily used for the sort of personal sharing that is the hallmark of a [social media] service seems a plausible reason why little switching would occur."). Moreover, "the question of whether the market should include other products is better resolved at the summary judgment stage." Klein v. Facebook, Inc., 580 F. Supp. 3d 743, 765 (N.D. Cal. 2022) (citation and quotations omitted).

1989) ("The goods and services that sellers or producers offer provide the best indicia of who competes in the same market."). While identifying other competitors in the market would provide a clearer picture of the market, particularly given Milk Moovement's allegations that the market is heavily concentrated, there is no requirement that Milk Moovement identify every competitor. See Klein, 580 F. Supp. 3d at 765 ("A plaintiff is not required to identify every alleged competitor in its pleadings.") (citation and internal quotations omitted).

Similarly, the court finds no issue with Milk Moovement's limitation that the data services are "for milk producers and processors." Contrary to Dairy's argument, this limitation describes the product, not the consumers. See Brown Shoe, 370 U.S. at 325 (a market "may be determined by examining such practical indicia as . . . the product's peculiar characteristics and uses . . . [and] distinct customers"). Accordingly, the court finds Milk Moovement has sufficiently pled a relevant product market.

2. Geographic Market

"The geographic market extends to the area of effective competition where buyers can turn for alternative sources of supply." Tanaka v. Univ. of S. Cal., 252 F.3d 1059, 1063 (9th Cir. 2011) (citations and internal punctuation omitted). There are two ways that courts define a geographic market: (1) the location of the relevant suppliers, which "must include all the firms with the relevant production, sales, or service facilities in the specific region"; or (2) the location of the relevant customers, which must include "all the firms that sell to

customers in the geographic region, regardless of the location of the supplier making those sales." Pacific Steel Grp. v. Com. Metals Co., 600 F. Supp. 3d 1056, 1068 (N.D. Cal. 2022) (citing 2010 Dep't of Justice and FTC Horizontal Merger Guidelines §§ 4.2.1, 4.2.2).

Here, Milk Moovement defines the geographic market as the United States or, in the alternative, the sub-national regions for milk purchasing established by the USDA: Northeast, Appalachian, Florida, Southeast, Upper Midwest, Central, Midwest, California, Pacific Northwest, Southwest, and Arizona. (2d Am. Countercls. ¶ 126-27.)

At this stage, the court finds both geographic markets are sufficiently pled. The dairy industry is heavily regulated by the federal government. Thus, while Milk Moovement and Dairy both operate overseas, federal regulation determines the geographic boundaries in which milk producers and processors must operate. Further, the FMMO system does not apply outside of the United States. Cf. Brown Shoe, 370 U.S. at 336-37 ("The geographic market selected must . . . correspond to the commercial realities of the industry . . . .") (internal quotations omitted). The court finds it plausible that industry regulations control whether one sub-region could turn to another for alternative supply. Accordingly, the court finds Milk Moovement has sufficiently pled a relevant geographic market.

Because Milk Moovement has plausibly defined both a relevant product market and a relevant geographic market, it has sufficiently pled a relevant market at this stage. See Newcal, 513 F.3d at 1045 ("[Because] the validity of the 'relevant

market' is typically a factual element, alleged markets may survive scrutiny under Rule 12(b)(6) subject to factual testing by summary judgment or trial.") (citations omitted); Netafirm, 562 F. Supp. 3d at 1081 (relevant market allegations are often able to survive scrutiny under Rule 12(b)(6) because "relevant market determinations are typically fact-intensive, with actual inquiry into the commercial realities faced by consumers") (citations and internal quotations omitted).

C. Market Power

"Along with a relevant market definition, a plaintiff must plead that the defendant has power within that market." Netafirm, 562 F. Supp. 3d at 1085 (citing Newcal) (additional citations omitted). "The essence of market power is a firm's 'ability to raise prices profitably by restricting output.'" Pacific Steel, 600 F. Supp. 3d at 1072 (quoting Ohio v. Am. Express Co., 138 S. Ct. 2274, 2288 (2018)). "[Courts] rely on market power to help distinguish between restraints that are likely to substantially impair competition and those that are not." Flaa v. Hollywood Foreign Press Ass'n, 55 F.4th 680, 693 (9th Cir. 2022) (citations omitted). "A plaintiff may prove that a restraint has anticompetitive effect either 'directly or indirectly." Qualcomm, 969 F.3d at 989 (quoting Am. Express, 138 S. Ct. at 2284).

1. Direct Evidence

"Direct evidence includes proof of actual detrimental effects on competition, such as reduced output, increased prices, or decreased quality in the relevant market." Qualcomm, 969 F.3d at 989 (citations and internal quotations omitted). Here, Milk

Moovement alleges that Dairy "charge[s] supracompetitive prices and wrongly restricts customers' ability to freely choose their service providers." (2d Am. Countercls. ¶ 136.) Milk Moovement further alleges that Dairy "is able to charge [their] supracompetitive prices to its customers even while it provides poor, lackluster service." (Id. ¶ 137.)

In support of these allegations, Milk Moovement refers to documents produced in discovery which purport to show that: there were significant problems with Dairy's software that went uncorrected for years; Dairy did not have the software capacity that at least one customer, California Dairies, required; Dairy sought to charge California Dairies an additional $120,000 to provide the requested services; and Dairy's CEO not only knew about Dairy's failure to provide these services but also thought that charging for such services should be Dairy's standard practice. (2d Am. Countercls. ¶¶ 169, 172, 176.)

Milk Moovement further alleges that the various exclusivity provisions in Dairy's customer contracts meant that any customer seeking to leave Dairy "would be forced to leave behind years of its own analytics and production data -- information that Dairy knows forms the lifeblood of strategic decision making in the industry." (2d. Am. Countercls. ¶ 145.) Not only would such provisions deter any customer from leaving Dairy, but they would also deny any Dairy competitor "the functionality necessary to permit an 'apples to apples' comparison between different time periods."[12] (Id. ¶ 146.)

[12] Dairy argues that the fact California Dairies left Dairy after Dairy tried to charge a higher price shows that Dairy

Because its customers were barred from leaving, Dairy could provide lower quality services. See Qualcomm, 969 F.3d at 989.

2. Circumstantial Evidence

"To demonstrate market power circumstantially, a plaintiff must: (1) define the relevant market, (2) show that the defendant owns a dominant share of that market, and (3) show that there are significant barriers to entry and show that existing competitors lack the capacity to increase their output in the short run." Rebel Oil, 51 F.3d at 1434 (citations omitted). As discussed above, Milk Moovement has sufficiently defined the relevant market.

i. Market Share

"Measurement of market share is necessary to determine whether the defendant possesses sufficient leverage to influence marketwide output." Rebel Oil, 51 F.3d at 1437; see Pacific Steel, 600 F. Supp. 3d at 1073 ("[A] dominant share of the market often carries with it the power to control output across the market and in so doing control prices.") (citing Image Tech Servs., Inc. v. Eastman Kodak Co., 125 F.3d 1195, 1206 (9th Cir. 1997)). Generally, a 65 percent market share is sufficient to establish a prima facie case of market power. Optronic Techs., Inc. v. Ningbo Sunny Elec. Co., 20 F.4th 466, 484 (9th Cir. 2021) (citation omitted). A lower market share is permissible for claims of attempted monopolization. See Rebel Oil, 51 F.3d at

---

could not in fact charge supracompetitive prices. (See Mot. Dismiss at 26.) Dairy, however, chooses to look at the factual allegations only in isolation. While California Dairies did leave Dairy for Milk Moovement, doing so led Dairy to initiate this action.

1438 (finding 44 percent sufficient in an attempted monopolization case).

Here, Milk Moovement alleges that Dairy's market share exceeds 80 percent because, as Dairy advertises on its website, "over 80 percent of the 100 largest dairy companies in the country are Dairy.com customers." (2d. Am. Countercls. ¶ 134.) The court shares Dairy's concerns that Milk Moovement appears to have premised its market share allegation solely upon this 80 percent figure. However, plaintiffs are not required to plead market share with specificity or to explain how they arrived at their market share allegation. See United Energy Trading, LLC v. Pac. Gas & Elec., 200 F. Supp. 3d 1012, 1020 (N.D. Cal. 2016) (finding sufficient an alleged market share of 70 to 90 percent); Teradata Corp. v. SAP SE, No. 18-cv-03670 WHO, 2018 WL 6528009, at *19 (N.D. Cal. Dec. 12, 2018) (finding sufficient an alleged market share of 60 to 90 percent "on information and belief"). Moreover, Dairy's arguments that Milk Moovement's market share allegation is insufficient are predominately factual and thus not suitable at the motion to dismiss stage.[13] Because a market share of above 80 percent is more than sufficient to establish market power, see Optronic, 20 F.4th at 484, Milk Moovement has sufficiently alleged market power at this stage.

ii. Entry Barriers

"Market power cannot be inferred solely from a dominant market share." Pacific Steel, 600 F. Supp. 3d at 1073 (citation

[13] Dairy further argues that Milk Moovement failed to offer an explanation as to why the 80 percent figure is relevant to relevant geographic markets when three of the top ten companies on the list of the 100 largest dairy companies have locations outside of the United States. (Mot. Dismiss at 23.)

omitted). "The plaintiff must show that new rivals are barred from entering the market and show that existing competitors lack the capacity to expand their output to challenge the predator's high price." Rebel Oil, 51 F.3d at 1439 (citation omitted). "Entry barriers are 'additional long-run costs that were not incurred by incumbent firms but must be incurred by new entrants,' or 'factors in the market that deter entry while permitting incumbent firms to earn monopoly returns.'" Id. at 1439 (citation omitted).

"In evaluating entry barriers, we focus on their ability to constrain not those already in the market, but . . . those who would enter but are prevented from doing so." Id. at 1439 (citation and internal quotation omitted). "The fact that entry has occurred does not necessarily preclude the existence of 'significant' entry barriers. . . . Barriers may still be 'significant' if the market is unable to correct itself despite the entry of small rivals." Id. at 1440.

"The main sources of entry barriers are: (1) legal license requirements; (2) control of an essential or superior resource; (3) entrenched buyer preferences for established brands; (4) capital market evaluations imposing higher capital costs on new entrants; and, in some situations, (5) economies of scale." Id. at 1439 (citations omitted). See e.g., id. at 1439-40 (municipal regulations and state laws regarding oil and gas are entry barriers); United Energy, 200 F. Supp. 3d at 1021-23 (regulations regarding natural gas are entry barriers); Pacific Steel, 600 F. Supp. 3d at 1074 (environmental regulations, cost and time, and complexity involved in building and operating a

steel mill are entry barriers); Klein, 580 F. Supp. 3d at 779 (the switching costs between social media networks are entry barriers).

Here, Milk Moovement alleges that there are substantial barriers to entry in the market for data services for milk producers and processors. Because the milk industry is heavily regulated, it is both more complicated and costly for new entrants to comply with those regulations than an existing competitor. (2d. Am. Countercls. ¶ 129.) Milk Moovement also alleges that Dairy has created multiple barriers including: (1) Dairy's de facto exclusive contracts, which restrict new entrants to the market; (2) Dairy's customer-owner relationship with DFA, the largest milk producer and one of the largest milk processors in the country; and (3) Dairy's confidentiality provisions, which frustrate a new entrant's ability to speak with a potential customer about their user requirements and data. (Id. ¶ 129-132.) Milk Moovement has thus alleged facts which plausibly show that Dairy charges supracompetitive prices, restricts customers from choosing their dairy data service provider, has a market share of over 80 percent, and has created multiple barriers to entry.

For the reasons stated above, the court finds Milk Moovement has sufficiently alleged both direct and circumstantial evidence showing anticompetitive restraint. Accordingly, Milk Moovement has sufficiently pled that Dairy has market power within the relevant market. The court will next address Milk Moovement's various antitrust claims.

D. Sherman Act § 2

Section 2 of the Sherman Act provides: "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty . . . ." 15 U.S.C. § 2. Here, Milk Moovement asserts two claims under § 2 of the Sherman Act: conspiracy to monopolize (Claim 5) and monopolization and attempted monopolization (Claim 6).

1. Antitrust Injury

"A plaintiff may only pursue an antitrust action if it can show 'antitrust injury, which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful.'" Am. Ad. Mgmt, Inc. v. Gen. Tel. Co. of Cal., 190 F.3d 1051, 1055 (9th Cir. 1999) (citations and internal quotations omitted). "[C]onduct that eliminates rivals reduces competition. But reduction of competition does not invoke the Sherman Act until it harms consumer welfare." Rebel Oil, 51 F.3d at 1433 (citations omitted). "[A] causal antitrust injury is a substantive element of an antitrust claim, and the fact of injury or damage must be alleged at the pleading stage." Somers v. Apple, Inc., 729 F.3d 953, 963 (9th Cir. 2013).

An antitrust injury consists of five elements: "(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, . . . (4) that is of the type that the antitrust laws were intended to prevent,' and (5) 'the injured party [is] a participant in the same market as the alleged malefactors." Id. (citation omitted).

"There can be no antitrust injury if the plaintiff stands to gain from the alleged unlawful conduct." Am. Ad., 190 F.3d at 1056 (citation omitted); see Reveal Chat Holdco, LLC v. Facebook, Inc., 471 F. Supp. 3d 981, 998 (N.D. Cal. 2020) ("An increase in market prices, 'though harmful to competition, actually benefit[s] competitors.'") (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 583 (1986)).

Courts have recognized various types of antitrust injuries, including limiting consumer choice, reducing output and innovation, and increasing prices for lower quality and fewer services. See e.g., Glen Holly Ent., Inc. v. Tektronix Inc., 343 F.3d 1000, 1011 (9th Cir. 2003) ("One form of antitrust injury is '[c]oercive activity that prevents its victims from making free choices between market alternatives.'") (citation omitted); Klein, 580 F. Supp. 3d at 804 ("[Plaintiffs] have suffered an injury because Facebook 'detrimentally changed the market make-up and limited consumers' choice to one source of output.'") (citation omitted); In re Juul Labs Labs, Inc. Antitrust Litig., 555 F. Supp. 3d 932, 959 (N.D. Cal. 2021) (antitrust injury plausible where plaintiff asserted allegations of "supracompetitive process, reduced output, and reduced innovation"); Sumotext Corp. v. Zoove, Inc., No. 16-cv-01370 BLF, 2017 WL 2774382, *10 (N.D. Cal. 2017) (allegations that customers "have been forced to pay supracompetitive prices while receiving lower quality and few services with more onerous and adhesive contract terms" and that the market has suffered "price increases, lower quality products, and few market alternatives" are sufficient to plead antitrust injury at the motion to dismiss

stage).

Here, Milk Moovement alleges that Dairy's anticompetitive scheme included locking customers into de facto exclusive contracts, unlawfully acquiring competitors, and barring Milk Moovement from marketing opportunities. (2d Am. Countercls. ¶¶ 140-43, 151-67, 193.) Milk Moovement further alleges that "Dairy's conduct has inhibited Milk Moovement and other competitors from entering the market and deterred customers from freely switching service providers, all of which has increased prices, decreased consumer choice, and resulted in worse services than would otherwise exist." (Id. ¶ 168.)

Dairy's arguments that Milk Moovement failed to plausibly allege antitrust injury are unpersuasive. First, Dairy contends that any claims concerning its 2015 purchase of United Dairymen's software system and the 2018 acquisition of Data Specialists, Inc. are barred by the statute of limitations. (See Mot. Dismiss at 28-29.) Milk Moovement's antitrust claims all have a four-year statute of limitations. See 15 U.S.C. § 15b (Sherman Act and Clayton Act); Cal. Bus. & Prof. Code § 16750.1 (Cartwright Act); Cal. Bus. & Prof. Code § 17208 (UCL). The fact that some acquisitions occurred outside the four-year statute of limitations does not mean that Milk Moovement has failed to plausibly allege antitrust injury at this stage. Moreover, Milk Moovement notes that while only the 2022 acquisition of Ever.Ag can give rise to damages, there is no statute of limitations for injunctive relief claims under Section 16 of the Clayton Act. (Opp'n Mot. Dismiss at 24.) Thus, if the time-barred acquisition is found to violate antitrust laws, Dairy can be ordered to

divest that acquisition. See California v. Am. Stores Co., 495 U.S. 271, 282 (1990) ("[T]he plain text of § 16 [of the Clayton Act] authorizes divestiture decrees to remedy § 7 violations.").

The court likewise rejects Dairy's argument that Milk Moovement failed to plausibly allege that the companies Dairy acquired were "competitors" of Dairy. (See Mot. Dismiss at 29-31.) For example, the press releases which explain how the acquisitions were intended to further develop Dairy's services plausibly suggest that the acquisitions were of competitors.[14] (See Opp'n Mot. Dismiss at 24-25 (Docket No. 289).) Dairy's arguments to the contrary involve factual determinations and therefore are not appropriate at the motion to dismiss stage.[15]

Milk Moovement has alleged facts showing that Dairy's

---

[14] The press release announcing the acquisition of Data Specialists stated that the "[Data Specialists] manufacturing suite" was "a powerful solution that handles complex in-plant processing, further extending Dairy.com traceability capabilities across the supply chain." (Opp'n Mot. Strike at 24-25.) The press release for the Ever.Ag acquisition was similar: "[Dairy is] now even more capable of supporting the connected supply chain and ultimately empowering it to feed a growing world." (Id. at 25.)

[15] In addition to arguing that Milk Moovement failed to allege that the acquisitions were of competitors, Dairy argues that (1) Milk Moovement failed to plead that it suffered a legally cognizable antitrust injury because Milk Moovement stood to gain from the alleged increase in prices, (2) Milk Moovement's allegations that Dairy had an inferior product in fact created Milk Moovement's business opportunity, (3) contractual restrictions in software and grant-base licenses are reasonable, and (4) enforcement of contractual rights is entitled to Noerr-Pennington protection. (Mot. Dismiss at 32-34.) The Noerr-Pennington doctrine "provides that those who petition any department of the government for redress," including the judicial branch, "are generally immune from statutory liability for their petitioning conduct." B&G Foods N. Am., Inc. v. Embry, 29 F.4th 527, 535 (9th Cir. 2022).

conduct, including acquisition of competitors and exclusive contracts, prevented Milk Moovement from growing in the market for dairy data processing services, limited consumer choice, and increased prices. The court therefore finds that Milk Moovement has sufficiently alleged antitrust injury.

2. Conspiracy to Monopolize (Claim 5)

To state a claim for conspiracy to monopolize under § 2 of the Sherman Act, a plaintiff must show: "(1) an agreement or understanding [alleged conspirators]; (2) a specific intent to monopolize; and (3) overt acts in furtherance of the alleged conspiracy." Optronic, 20 F.4th at 482 (citation and internal quotations omitted).

Here, Milk Moovement alleges that Dairy and DFA conspired to monopolize the relevant market by virtue of their customer-owner relationship, DFA's refusal to work with Dairy's competitors in the dairy data processing market, and DFA's ability to restrict competition in the milk production market by suppressing milk prices. (2d Am. Countercls. ¶ 223.)

Contrary to Dairy's argument, the court does not read Milk Moovement's counterclaim as advancing a "shared monopoly"[16] theory because DFA does not operate in the relevant market. See Standfacts Credit Servs. Inc., v. Experian Info. Sol., 405 F. Supp. 2d 1141, 1152 (C.D. Cal. 2005) ("[A]n allegation of conspiracy to create a shared monopoly does not plead a claim of conspiracy under section 2.") (citation omitted); see also United

[16] A "shared monopoly" is an oligopoly. See Consol. Terminal Sys. Inc., v. ITT World Comms., Inc., 535 F. Supp. 225, 228-29 (S.D. N.Y. 1982).

Food & Com. Workers Local 1776, et al. v. Teikoku Pharma USA, Inc., 74 F. Supp. 3d 1052, 1076 (N.D. Cal. 2014) ("A monopoly, by definition, consists of a single firm, and both monopolization and attempted monopolization are single-firm violations[.]") (citation omitted).

Rather, Milk Moovement's allegations plausibly show that Dairy and DFA "conspired to endow" Dairy with market power in the data processing market. See United Food, 74 F. Supp. 3d at 1077 (dismissing claim because complaint "d[id] not allege that the parties conspired to endow either [party] with market power"). Milk Moovement's theory is that DFA's suppression of milk prices prevents other milk producers from entering or growing in the market for milk production. This limits the number of milk producers who could seek data processing services from a Dairy competitor. The limited number of milk producers thus blocks data processing companies from entering and growing in the relevant market. Dairy thus "leverage[s] [its] monopoly to prevent other market participants . . . from reaching scale as a viable competitor." (Id. ¶ 223.) Accordingly, the court finds that Milk Moovement has alleged facts sufficient to support a claim for conspiracy under § 2 of the Sherman Act.

2. Monopolization and Attempt (Claim 6)

Milk Moovement also asserts a claim for monopolization and attempted monopolization under § 2 of the Sherman Act. To state a claim for monopolization under § 2 of the Sherman Act, "a plaintiff must show: (a) the possession of monopoly power in the relevant market; (b) the willful acquisition or maintenance of that power, and (c) causal antitrust injury." Qualcomm, 969 F.3d

at 990 (internal quotations and citations omitted); see also Verizon, 540 U.S. at 878-79 ("[T]he willful acquisition or maintenance of [monopoly] power . . . distinguishe[s] [power] from growth or development as a consequence of a superior product, business acumen, or historic accident.") (citation and quotation omitted).

To state a claim for attempted monopolization under § 2, a plaintiff must show: "(1) specific intent to control prices or destroy competition; (2) predatory or anticompetitive conduct to accomplish the monopolization; (3) dangerous probability of success; and (4) causal antirust injury." Cost Mgmt. Servs., Inc. v. Wash. Nat. Gas Co., 99 F.3d 937, 949-50 (9th Cir. 1996); see also Optronic, 20 F.4th at 481-82. "A plaintiff may establish specific intent to monopolize through either direct evidence of unlawful design or circumstantial evidence principally of illegal conduct." Optronic, 20 F.4th at 483 (citation and internal quotations omitted).

For reasons similar to those already discussed, the court finds Milk Moovement plausibly alleges its claim for monopolization and attempted monopolization under § 2. Milk Moovement alleges that Dairy acquired competitors and used exclusivity contracts to prevent customers from leaving Dairy to work with its competitors. (2d. Am. Countercls. ¶¶ 138-45, 151-55.) Such allegations are sufficient to show that Dairy both acquired and maintained monopoly power as well as acted with the specific intent to destroy competition. Moreover, Milk Moovement's allegation of Dairy's market share is sufficient to show that Dairy had a high probability of success in monopolizing

the market. See Cost Mgmt., 99 F.3d at 949-50. Accordingly, Milk Moovement has alleged facts sufficient to support a claim for monopolization and attempted monopolization under § 2 of the Sherman Act.

E. Sherman Act § 1 (Claim 7)

In addition to its § 2 conspiracy claim, Milk Moovement asserts a conspiracy claim under § 1 of the Sherman Act. "Section 1 'targets concerted anticompetitive conduct, [whereas] [Section 2] targets independent anticompetitive conduct.'" Optronic, 20 F.4th at 481 (citation omitted). Section 1 of the Sherman Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1.[17] To state a claim under § 1, a plaintiff must show: "(1) a contract, combination or conspiracy; (2) 'that unreasonably restrained trade . . . ; and (3) that restraint affected interstate commerce.'" Optronic, 20 F.4th at 479 (citation omitted).

Here, the court finds Milk Moovement's allegations are sufficient to support a conspiracy claim under § 1. Milk

[17] "Although on its face, Section 1 appears to outlaw virtually all contracts, it has been interpreted as 'outlaw[ing] only unreasonable restraints' of trade." In re Nat'l Football League's Sunday Ticket Antitr. Lit., 933 F.3d 1136, 1149-50 (9th Cir. 2019) (quoting State Oil Co. v. Khan, 522 U.S. 3, 10 (1997)). "Because § 1 . . . only [prohibits] restraints effected by a contract, combination, or conspiracy, the crucial question is whether the challenged anticompetitive conduct stems from an independent decision or from an agreement, tacit or express." Twombly, 550 U.S. at 553 (citations and internal quotations omitted); see Optronic, 20 F.4th at 479 ("To establish a conspiracy, the available evidence must tend 'to exclude the possibility that the alleged conspirators acted independently.'") (citation and internal quotations omitted).

Moovement alleges that DFA is both a co-founder and owner of Dairy and will not work with Dairy's competitors. (2d. Am. Countercls. ¶ 94.) As both a milk producer and milk processor, DFA is not only motivated to suppress milk prices, but also their market share in fact enables it to manipulate FMMOs and milk prices. (Id. ¶ 114.) Moreover, Milk Moovement alleged that evidence produced in prior litigation showed DFA had accessed competing producers' pricing data in an effort to manipulate milk prices. (Id. ¶ 120.) By allegedly suppressing milk prices, DFA prevents other milk producers, who may seek data processing services from a Dairy competitor, from growing in the market for milk production. As a result, Dairy can "leverage [its] monopoly to prevent other market participants . . . from reaching scale as a viable competitor." (Id. ¶ 223.)

The court finds these allegations constitute "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers, 795 F.3d 1124, 1129 (9th Cir. 2015) (quoting Twombly, 550 U.S. at 556). Accordingly, Milk Moovement has alleged facts sufficient to support a claim for conspiracy to monopolize under § 1 of the Sherman Act.

F. Cartwright Act (Claim 8)

Milk Moovement also asserts a claim under California's Cartwright Act. The Cartwright Act is California's antitrust law. See Cal. Bus. & Prof. Code §§ 16700 et seq. The Cartwright Act "bans agreements that 'prevent competition in . . . [the] sale or purchase of . . . any commodity.'" Pacific Steel, 600 F. Supp. 3d at 1080 (quoting Cal. Bus. & Prof. Code § 16720(c)).

The inquiry under the Cartwright Act is similar to that under Section 1 of the Sherman Act. See Jain Irrigation, Inc. v. Netafirm Irrigation, Inc., 386 F. Supp. 3d 1308, 1314 (E.D. Cal. 2019) (Drozd, J.) ("[T]he analysis under [the Cartwright Act] 'mirrors the analysis under Federal Law because the Cartwright Act . . . was modeled after the Sherman Act.") (quoting Cnty of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1160 (9th Cir. 2001)) (additional citation omitted). Here, as already discussed, Milk Moovement has alleged facts sufficient to support a claim under § 1 of the Sherman Act. Accordingly, it has also sufficiently alleged its claim under the Cartwright Act.

G. Clayton Act § 7 (Claim 9)

Milk Moovement asserts a claim for unlawful mergers and acquisitions under § 7 of the Clayton Act. "Section 7 [of the Clayton Act] prohibits mergers that tend 'substantially to lessen competition' or 'create a monopoly.'" Optronic, 20 F.4th at 485 (citing 15 U.S.C. § 18). "To establish a prima face [Section 7] case, [a plaintiff] must (1) propose the proper relevant market and (2) that that the effect of the merger in that market is likely to be anticompetitive." Id. (citation and quotations omitted); see Saint Alphonsus Med. Ctr.-Nampa Inc. v. Saint Luke's Health Sys. Ltd., 778 F.3d 775, 788 (9th Cir. 2015) ("Section 7 does not require proof that a merger or other acquisition has caused higher prices in the affected market. All that is necessary is that the merger create an appreciable danger of such consequences in the future.") (citation and quotations omitted). "[T]he anticompetitive effect of [a] merger is further enhanced by high barriers to market entry." FTC v. H.J. Heinz

Co., 246 F.3d 708, 718 (D.C. Cir. 2001) (explaining that high barriers to entry "eliminates the possibility that the reduced competition caused by the merger will be ameliorated by new competition from outsiders"); see also Saint Alphonsus Med., 778 F.3d at 788.

Here, Milk Moovement alleges that Dairy's various acquisitions of competing supply-chain software products and services, including of Data Specialists, Inc. and Ever.Ag, "substantially lessened competition in the market for data services to milk producers and processors in the United States . . . ." (2d Am. Countercls. ¶ 258.) Moreover, Milk Moovement alleges that Dairy terminated competition through acquisitions by purchasing United Dairymen's competing software system, but never bringing it to market. (Id. ¶ 155.)

As already discussed, Milk Moovement has sufficiently pled a relevant market. The court also found plausible Milk Moovement's allegations that the relevant market has high barriers to entry, that Dairy's market power exceeds 80 percent, and that the companies Dairy acquired were competitors. Because these acquisitions limit the amount of available software providers in a market with high entry barriers, see H.J. Heinz Co., 246 F.3d at 718, the court finds it plausible that these acquisitions further concentrate an already concentrated market. Thus, the effect of the acquisitions "is likely to be anticompetitive." See Optronic, 20 F.4th at 485. Accordingly, Milk Moovement has alleged facts sufficient to support a claim under § 7 of the Clayton Act.

H. UCL (Claim 10)

Finally, Milk Moovement asserts a claim under California's UCL. "California's UCL[] prohibits 'any unlawful, unfair, or fraudulent business act or practice.' This cause of action is generally derivative of some other illegal conduct or fraud . . ."). Castaneda v. Saxon Mortg. Servs., Inc., 687 F. Supp. 2d 1191, 1202 (E.D. Cal. 2009) (Shubb, J.) (quoting Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 187 (1999)). Here, Milk Moovement's asserts its UCL claim for Dairy's alleged violations of the Sherman Act and Clayton Act. (Id. ¶ 263.) Because Milk Moovement has adequately pled its antitrust claims, it has also adequately pled its unfair competition claim. See Name.Space, 795 F.3d at 1134 ("Statutory liability can be premised on antitrust or trademark violations.").

For the reasons stated above, the court finds that Milk Moovement has plausibly alleged facts sufficient to support its counterclaims for conspiracy to monopolize under § 2 of the Sherman Act, monopolization and attempted monopolization under § 2 of the Sherman Act, unlawful restraint of trade under § 1 of the Sherman Act, unlawful restraint of trade under California's Cartwright Act, unlawful mergers or acquisitions under § 7 of the Clayton Act, and unfair competition under California's UCL.

IT IS THEREFORE ORDERED that Dairy's motion to strike (Docket No. 270) and motion to dismiss (Docket No. 266) be, and the same hereby are, DENIED.

Dated: May 12, 2023

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE